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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,364	07/05/2006	Nicole Baratin	0579-1126	6895

466 7590 11/09/2009  
YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER
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BECKER, DREW E

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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11/09/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/578,364	BARATIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 11-19 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/5/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of group I in the reply filed on 9/24/09 is acknowledged. The traversal is on the ground(s) that the PCT examined all claims, that the inventions are not independent or distinct, and would not pose a serious burden. This is not found persuasive because the present claims have been amended and therefore are not the same claims examined in the PCT. Regarding, the second argument, claims 1 and 11 are independent of one another and claim distinctly different concepts as evidenced by their different special technical features. Regarding the 3<sup>rd</sup> argument, the apparatus and method claims would be classified and searched in different classes and subclasses. The method is classified in class 426, while the apparatus would be classified in class 219 or 126. In addition, it is noted that applicant filed new apparatus claims 21-26. These new claims will be grouped with apparatus claims 11-19 in group II due to their similarity and since both are apparatus claims.

Furthermore, the common linking concept in these claims is the detection of an increase in temperature of the heater unit. This concept is clearly taught in the prior art as shown by Manganiell et al [Pat. No. 6,453,802] (column 6, lines 14-36). Therefore, apparatus claims 11-19 and 21-26 are properly restricted from the method claims since the apparatus claims also add the limitations of means for commanding feeding of water (40, 203) in claim 11, and means for triggering feeding of water in claim 21. The method claim 1 can be accomplished without these devices by simply using manual feeding of

water. In addition, the apparatus claims may be used to heat non-edible materials and are not limited to just heating of foods.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 11-19 and 21-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/24/09.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 5/5/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. The copies of the FOR references are missing.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. The term "significantly higher" in claim 5 is a relative term which renders the claim indefinite. The term "significantly higher" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what degree or level of temperature difference would be considered "significant".

7. Claims 6 recites "said first threshold temperature (T1) is from approximately 110°C to 130°C and/or said stabilization temperature (T0) is from approximately 100°C to 120°C". It is not clear how these two values can overlap when parent claim 5 requires T1 to be "significantly higher" than T0.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, 7, 9, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Manganiello et al [Pat. No. 6,453,802].

Manganiello et al teach a method for operating a food steamer comprising a steam generator having a water evaporation vessel and heater unit (Figure 4, #10, 22, 30) by detecting an increase in temperature of a heater unit and triggering feeding of water to the vessel when heat sensor is exposed above the water level wherein this water level

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is associated with a predetermined amount of water to be added (column 6, lines 5-36), pouring water to the vessel by gravity at the beginning of the process (column 5, line 31), a pair of temperature sensors being located on opposite ends of the heater unit (Figure 5, #34a-b) wherein the two sensors are associated with two different temperature levels (column 6, lines 14-36), and deactivation of the heater unit if the lower temperature sensor is exposed (column 6, lines 29-36).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manganiello et al as applied above, in view of Polster [Pat. No. 5,613,423].

Manganiello et al teach the above mentioned concepts. Manganiello et al do not recite a first threshold temperature of 110-130°C and/or a stabilization temperature of 100-120°C, and a water feed circuit which feeds water for a predetermined time. Polster teaches a method for operating a steam cooker by using temperature sensors attached to the vessel to detect low water levels and automatically operate a water supply and control valve to refill the vessel (column 8, lines 45 to column 9, line 7) wherein the device operates with water heated to a stabilization temperature of 140-212°F or 60-100°C (column 10, lines 20-28). It would have been obvious to one of ordinary skill in

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the art to incorporate the water maintenance concepts of Polster into the invention of Manganiello et al since both are directed to methods of maintaining a water level within a steam generator, since Manganiello et al already included monitoring of the heater temperature and manual feeding of water, since Manganiello et al simply did not specify a stabilization temperature, since Polster teaches that steam cookers commonly operated at a stabilization temperature of 140-212°F or 60-100°C (column 10, lines 20-28), and since the automatic refilling means of Polster would have eliminated the need for manual refilling in the method of Manganiello et al.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Manganiello et al as applied above, in view of Hanks [Pat. No. 1,913,442] Manganiello et al teach the above mentioned concepts. Manganiello et al do not recite continuing to heat the water to result in complete evaporation. Hanks teaches a method for cooking food in steam cooker by completely evaporating the water (page 1, lines 16-24). It would have been obvious to one of ordinary skill in the art to incorporate the complete evaporation of hanks into the invention of Manganiello et al since both are directed to methods of operating steam cookers, since Manganiello et al already included monitoring the temperature of the bottom surface of the heater, and since Hanks teaches that cooking via complete evaporation followed by automatic shut-down of the device was commonly known and practiced in the steam cooker art (page 1, lines 16-24).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794